

ORIGINAL



0000063357

BEFORE THE ARIZONA CORPORATION

RECEIVED

COMMISSIONERS

2006 NOV -6 P 4: 30

Arizona Corporation Commission

DOCKETED

NOV -6 2006

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

nr

In the Matter of the Application of
Arizona Water Company for Approvals
Associated with a Transaction with the
Maricopa County Municipal Water
Conservation District Number One

DOCKET NO. W-01303A-05-0718

JOINT COMMENTS OF
COURTLAND HOMES, INC.,
CHI CONSTRUCTION COMPANY,
AND
TAYLOR WOODROW/ARIZONA,
INC.

Pursuant to the October 5, 2006 and November 2, 2006, Procedural Orders in this docket, Courtland Homes, Inc., an Arizona corporation (“Courtland”), CHI Construction Company, an Arizona corporation (“CHI”), and Taylor Woodrow/Arizona, Inc., an Arizona corporation (“Taylor Woodrow”), collectively herein referred to as “Developers”, through counsel undersigned, jointly submit their comments to the Staff Report and Recommended Order in the above-referenced matter.¹

Developers are currently developing master-planned communities within the Certificate of Convenience and Necessity of Arizona-American Water Company, Inc.’s (“Arizona-American”) Agua Fria District. Courtland is developing a master-planned community known as the Greer Ranch North Development which contains approximately 878 lots. Taylor Woodrow is developing a master-planned community known as the Sycamore Farms Development, which contains approximately 692 lots. CHI is developing a master-planned community known as the Sarah Ann Ranch Development which contains approximately 960 lots (of which CHI owns 838 lots). Developers have entered into agreements with Arizona-American with respect to the provision of water

¹ On November 3, 2006, the Developers filed an Application for Leave to Intervene in this proceeding. Because the deadline for intervenor comments is November 6, 2006, Developers are submitting these comments on the assumption that their application will be granted.

1 service to each of the above-referenced master-planned communities. Additionally, there
2 are other master-planned communities in development wherein one or more Developers
3 have or will be requesting water service from Arizona-American in the future. Thus,
4 Developers are directly and substantially impacted by Arizona-American's pending
5 application.

6 Developers have reviewed the Staff Report and Recommended Order and have one
7 concern that they believe should be addressed in the Recommended Order. Although the
8 proposed increase of the Water Facilities Hook-Up Fee ("WFHUF") is substantial,
9 Developers understand the need for the expeditious construction of the White Tanks Plant
10 in the Agua Fria Water District. However, Developers have already paid to Arizona-
11 American WFHUFs pursuant to the existing Commission-approved Arizona-American
12 tariff, as well as constructed other back-bone infrastructure necessary for water service to
13 their respective developments that also provides regional benefits to Arizona-American.
14 Therefore, Developers do not object to the recommendations set forth in the Staff Report
15 so long as the Recommended Order expressly states that to the extent Arizona-American
16 has received payment for WFHUFs under the existing tariff, if and when the new tariff
17 becomes effective, Arizona-American may not charge the difference between the existing
18 WFHUF and the new WFHUF as a condition of receiving service, regardless of whether
19 Arizona-American has provided a meter.² Further, Arizona-American should be
20 precluded from unilaterally refunding WFHUFs paid by an applicant for water service
21 under the existing tariff in order to charge the higher WFHUFs under the new tariff.

22 Developers recognize that a public utility may only charge its customers based
23 upon the Commission-approved tariff that exists at the time and that a utility may not
24 retroactively charge a tariff when a higher tariff goes into effect. However, Developers
25 believe that in the instant case, this clarification is necessary because although the
26 WFHUF has been fully paid, Arizona-American has not provided meters to the
27 Developers and this should not form the basis of a claim that the new tariff can be

28 ² Developers have already paid WFHUFs, but Arizona-American has not as yet "set" meters.

charged. Nor should Arizona-American be able to refund the lower WFHUF in favor of collecting the higher WFHUF at a later time. Making this explicit in the Final Order will eliminate any ambiguity on this issue.

Therefore, Developers are proposing the following amendments to the Recommended Order:

Finding of Fact No. 8, at the end of the sentence add: "and to Courtland Homes, Inc., CHI Construction Company and Taylor Woodrow/Arizona, Inc. ("Developers") by Procedural Order dated November __, 2006."

Add Finding of Fact No. 23 as follows: "On November 6, 2006, Developers filed comments requesting that it be made clear that to the extent that an applicant for water service has already paid the WFHUF under the existing tariff, that the Company be precluded from charging the difference between the existing WFHUF and the new WFHUF and that the Company be further precluded from unilaterally refunding WFHUFs paid under the existing tariff.

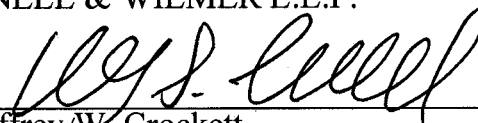
Add Conclusion of Law No. 9 as follows: "Developers recommendations as set forth in Finding of Fact No. 23 are reasonable and should be adopted."

Add a new Ordering paragraph as follows: "IT IS THEREFORE ORDERED that the Company shall not charge the new WFHUF to any applicant for water service that has already paid the WFHUF under the previous tariff and that the Company shall not be entitled to unilaterally refund WFHUFs paid under the previous tariff in favor of collecting new WFHUFs approved pursuant to this Decision.

DATED this 6th day of November, 2006.

SNELL & WILMER L.L.P.

By



Jeffrey W. Crockett
Bradley S. Carroll
Snell & Wilmer LLP
400 East Van Buren
Phoenix AZ 85004-2202

1 ORIGINAL and thirteen (13) copies filed with
2 Docket Control November 6, 2006.

3 COPY of the foregoing hand-delivered
4 November 6, 2006, to:

5 Teena Wolfe
6 Administrative Law Judge
7 Hearing Division
8 Arizona Corporation Commission
9 1200 West Washington Street
10 Phoenix AZ 85007

11 Christopher Kempley, Chief Counsel
12 Keith Layton
13 Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix AZ 85007

17 Ernest G. Johnson, Director
18 Steve Olea
19 James J. Dorf
20 Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix AZ 85007

24 Scott S. Wakefield, Chief Counsel
25 Residential Utility Consumer Office
26 1110 West Washington Street
27 Phoenix, AZ 8007

28 COPY of the foregoing sent via first class mail
and electronic mail November 6, 2006, to:

19 Craig A. Marks, Corporate Counsel
20 Arizona-American Water Company
21 19820 N. 7th Street, Suite 201
22 Phoenix, AZ 85024
23 craig.marks@azbar.org

24 Sheryl A. Sweeney
25 Michele L. Van Quathem
26 Ryley Carlock & Applewhite.
27 One North Central Avenue, Suite 1200
28 Phoenix AZ 85004
ssweeney@rca.law
mvanquathem@rca.law

By: 